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In Pro per

STATE OF CALIFORNIA

Energy Resources Conservation
And Development Commission

In the Matter of:	)	Docket No. 97-AFC-1
	)	
The Application for Certification	)	WEDNESDAY, May 3, 2000
For the High Desert Power Project [HDPP]	)	Beginning at 10 a.m.
	)	California Energy Commission
	)	Hearing Room A
	)	1516 Ninth Street
	)	Sacramento, California 95814
_____	)	

REQUEST
OF GARY A LEDFORD - PUBLIC INTERVENOR
TO MAKE ORAL ARGUMENT TO FULL
COMMISSION ON THE
REVISIED PRESIDING MEMBER'S
PROPOSED DECISION
FOR THE
HIGH DESERT POWER PROJECT

Respectfully submitted:
May 1, 2000

_____
GARY A. LEDFORD
PARTY IN INTERVENTION
IN PRO PER

REQUEST TO MAKE ORAL ARGUMENT ON PRESIDING MEMBERS PROPOSED DECISION FOR THE HIGH DESERT POWER PROJECT

I. EXECUTIVE SUMMARY

Intervenor requests that he be allowed to make Oral Arguments to the Full Commission on the Revised Presiding Members Proposed Decision and Errata. This argument is intended to clarify the record[1] and meet Intervenors exhaustion[2] remedies before this Commission on the use of WATER in cooling towers in a severely and critically overdrafted water basin. Intervenor requests he be allowed up to 30 minutes to make his argument.

Intervenor believes that the HDPP should not be certified at this time because the PROJECT of providing a RELIABLE source of WATER has not been fully determined. No CEQA determinations or Mandatory Findings of Significance [3] as required by Section 15065

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[1] Section 1236 Title 20
(a) Upon consideration of a proposed decision from a committee or hearing officer, the commission shall: (1) adopt, modify or reject the proposed decision, or (2) remand the matter to the committee or hearing officer for further hearings, or (3) reopen the evidentiary record and itself conduct further hearings. (b) When considering a proposed decision from a committee of hearing officer, the commission may limit presentations by all participants to written and oral submissions based upon the existing evidentiary record.

[2] Public Resources Code § 21177, sub. (a) ". . no litigation alleging CEQA noncompliance may be brought unless the alleged grounds of noncompliance were presented to the agency during the public comment period or at the agency's final hearing.

[3] **Title 14. California Code of Regulations §15065. Mandatory Findings of Significance**

A lead agency shall find that a project may have a significant effect on the environment and thereby require an EIR to be prepared for the project where any of the following conditions occur:

(a) The project has the potential to substantially degrade the quality of the environment, . . "

(b) The project has the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals.

(c) The project has possible environmental effects which are individually limited but cumulatively considerable.

(a) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

have been made. No Consideration and Discussion of Significant Environmental Impacts as required by Section 15126.2 [4] relating to Regional Water Issues has been conducted.

No Study of Growth Inducement[5] has been made,[6] and; the Cumulative Impacts on the regional WATER management as required by law[7] have not been established for the various entities that propose to participate in the WATER use at George Air Force Base and "beyond"[8] .

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[4] **Title 14. California Code of Regulations §15126.2 Consideration and Discussion of Significant Environmental Impacts.**

Significant Irreversible Environmental Changes Which Would be Caused by the Proposed Project Should it be Implemented. Uses of nonrenewable resources during the initial and continued phases of the project may be irreversible since a large commitment of such resources makes removal or nonuse thereafter unlikely. Primary impacts and, particularly, secondary impacts (such as highway improvement which provides access to a previously inaccessible area) generally commit future generations to similar uses. Also irreversible damage can result from environmental accidents associated with the project. Irretrievable commitments of resources should be evaluated to assure that such current consumption is justified.

[5] **Title 14. California Code of Regulations §Section 15126.2 Consideration and Discussion of Significant Environmental Impacts.**

(d) Growth-Inducing Impact of the Proposed Project. Discuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth (a major expansion of a waste water treatment plant might, for example, allow for more construction in service areas). Increases in the population may tax existing community service facilities, requiring construction of new facilities that could cause significant environmental effects. Also discuss the characteristic of some projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment.

[6] Staff Comments on the RPMPD dated April 13th 2000

The RPMPD Is Incorrect in Stating that All Impacts, Including Growth-Inducing Impacts Associated with the Importation of SWP Water, Have Been Analyzed in Pre-existing Environmental Documents.

The RPMPD cites environmental documents provided by Tom Dodson & Associates, and docketed on March 17, 2000. The RPMP states that these documents are part of the administrative record and that that they include an analysis of all impacts associated with the importation of SWP water into the basin. (RPMPD, p. 226, Findings and Conclusions 20, p. 32) However, staff finds nothing in these documents that this Commission could rely upon to address growth-inducing impacts potentially caused by the HDPP.

". . ., the Draft EIR for the transfer of the Berrenda Mesa SWP water entitlement simply states that it is based on an assumption that utility acquisition of water entitlement does not induce growth, as growth is dictated by local land use plans and ongoing growth in Southern California. (p. 6-2) Staff believes that a thorough analysis of growth-inducing effects requires more than merely stating that growth will occur in any event. We encourage the Commission not to rely on this document as evidence that growth-inducing effects associated with access to additional water sources provided by the HDPP have been analyzed.

[7]

Title 14. California Code of Regulations §15130. Discussion of Cumulative Impacts

(a) An EIR shall discuss cumulative impacts of a project shall be discussed when they are significant the project's incremental effect is cumulatively considerable, as defined in section 15065(c).

(1) As defined in Section 15355, a cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts.

The following elements are necessary to an adequate discussion of significant cumulative impacts:

(1) Either:

(A) A list of past, present, and reasonably anticipated probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency, or

(B) A summary of projections contained in an adopted general plan or related planning document, or in a prior environmental document which has been adopted or certified, which described or evaluated is designed to evaluate regional or areawide conditions contributing to the cumulative impact. Any such planning document shall be referenced and made available to the public at a location specified by the lead agency;

1. When utilizing a list, as suggested in paragraph (1) of subdivision (b), factors to consider when determining whether to include a related project should include the nature of each environmental resource being examined, the location of the project and its type. Location may be important, for example, when water quality impacts are at issue since projects outside the watershed would probably not contribute to a cumulative effect. Project type may be important, for example, when the impact is specialized, such as a particular air pollutant or mode of traffic.

2. "Probable future projects" may be limited to those projects requiring an agency approval for an application which has been received at the time the notice of preparation is released, unless abandoned by the applicant; projects included in an adopted capital improvements program, general plan, regional transportation plan, or other similar plan; projects included in a summary of projections of projects (or development areas designated) in a general plan or a similar plan; projects anticipated as later phase of a previously approved project (e.g. a subdivision); or those public agency projects for which money has been budgeted.

3. Lead agencies should define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used.

4. A summary of the expected environmental effects to be produced by those projects with specific reference to additional information stating where that information is available; and

5. A reasonable analysis of the cumulative impacts of the relevant projects. An EIR shall examine reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects of a proposed project.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083(b), 21093, 21094, and 21100, Public Resources Code; Whitman v. Board of Supervisors (1979) 88 Cal.App.3d 397; San Franciscans for Reasonable Growth v. City and County of San Francisco (1984) 151 Cal.App.3d 61; Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692; Laurel Heights Homeowners Association v. Regents of the University of California (1988) 47 Cal.3d 376; Sierra Club v. Gilroy (1990) 220 Cal.App.3d 30; Citizens to Preserve the Ojai v. County of Ventura (1985) 176 Cal.App.3d 421; Concerned Citizens of South Cent. Los Angeles

This was the most highly contested area in these proceedings. Intervenor has strongly disputed the propriety and the impacts of the project's proposed water supply plan. Intervenor does not oppose development of the project, *per se*, but contends that the Environmentally Preferred method of cooling a Power Project in a "Critically and Severely" overdrafted water basin is to mandate "Dry Cooling". The reasons**:**

(1) Allowing the project to use imported water for its intended consumptive use "…gives HDPP twice the amount of water at a reduced rate than other all other producers in the Basin and thus creates an inequity."[9] Several public commenters echo Intervenor's concerns.[10] HDPP could use SWP if it participated equitably in the mitigation to cure the overdraft as required by the Judgment to Physically cure the overdraft. This method would require HDPP to place one-acre foot in the ground for recharge for acre-foot of water is evaporates into the atmosphere and complies with the CEQA requirement of a **"project's contribution is less than cumulatively considerable if the project is required to implement or fund its fair share of a mitigation measure or measures designed to alleviate the cumulative impact. The lead agency shall identify facts and analysis supporting its conclusion that the contribution will be rendered less than cumulatively considerable".**

(2) No "Will Serve Letter", providing for a continuos and un-interruptable source of water for the Power Project has been provided.

(3) As required by law, a CEQA analysis has not been conducted by the Water Agency[s] that intend to provide water to the project. This includes an updated Regional Study of the MWA Water Management Plan to incorporate the 100% direct consumptive use of SWP Water for Cooling Towers, including but not

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v. Los Angeles Unified Sch. Dist. (1994) 24 Cal.App.4th 826; Las Virgenes Homeowners Fed'n v. County of Los Angeles (1986) 177 Cal.App.3d 300; San Joaquin Raptor/Wildlife Rescue Ctr v. County of Stanislaus (1994) 27 Cal. App.4th 713; and Fort Mojave Indian Tribe v. Cal. Dept. Of Health Services (1995) 38 Cal.App.4th 1574.

8 Hearing Transcript October 7th 1999, page[s] 166-172

"CREATE [sic] A WATER TREATMENT FACILITY THAT WILL ULTIMATELY BECOME AVAILABLE TO THE GENERAL PUBLIC FOR USE AS WE BUILD AND GROW AT GEORGE AIR FORCE BASE AND BEYOND"

Terry Caldwell
Mayor of the City of Victorville
Chairman of the Southern California International Airport Authority
Vice Chairman of the Victor Valley Economic Development Authority

9 (Ledford's "Brief on Reopened Hearings and Revised Comments", March 7, 2000, p. 20; see also 1/27/00 RT 24.)

10 (See, e.g.,1/27/00 RT 51-56; 2/18/00 RT 78, 90-92.).

limited to "Cumulative Impacts"[11] and "Growth Inducing Impacts" Instead these agencies intend to use the Presiding Members Proposed Decision as the functional equivalent to approve the contracts for these water facilities. This use of the RPMPD is a means to circumvent the law.

(4) The Pipelines, Wells and Treatment Facilities planned to serve this project are oversized for the purpose of providing water service to the redevelopment of George Air Force Base has not been studied under CEQA.

(5) The MWA in its argument to the California Supreme Court states Article X, Section 2 of the California Constitution prohibits the unreasonable use or waste of water. Intervenor believes that the interpretation under the Judgment before the California Supreme Court which mandates all other producers to purchase replacement water from the MWA to "Recharge" the basin on the basis of an average of 50% consumptive use will eventually prevent 10% or more of the

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[11] **Title 14. California Code of Regulations §Section 15130. Discussion of Cumulative Impacts:**

An EIR shall discuss cumulative impacts of a project shall be discussed when they are significant the project's incremental effect is cumulatively considerable, as defined in section 15065(c).

As defined in Section 15355, a cumulative impact consists of an impact, which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts.

(2) When the combined cumulative impact associated with the project's incremental effect and the effects of other projects is not significant, the EIR shall briefly indicate why the cumulative impact is not significant and is not discussed in further detail in the EIR. A lead agency shall identify facts and analysis supporting the lead agency's conclusion that the cumulative impact is less than significant.

(3) An EIR may determine that a project's contribution to a significant cumulative impact will be rendered less than cumulatively considerable and thus is not significant. **A project's contribution is less than cumulatively considerable if the project is required to implement or fund its fair share of a mitigation measure or measures designed to alleviate the cumulative impact. The lead agency shall identify facts and analysis supporting its conclusion that the contribution will be rendered less than cumulatively considerable.**

(4) An EIR may determine that a project's contribution to a significant cumulative impact is de minimus and thus is not significant. A de minimus contribution means that the environmental conditions would essentially be the same whether or not the proposed project is implemented.

(5) The discussion of cumulative impacts shall reflect the severity of the impacts and their likelihood of occurrence, but the discussion need not provide as great detail as is provided of for the effects attributable to the project alone. The discussion should be guided by standards of practicality and reasonableness, and should focus on the cumulative impact to which the identified other projects contribute rather than the attributes of other projects which do not contribute to the cumulative impact.

annual limited water entitlements of the MWA to be used for 100% consumptive use for evaporative cooling.

II. THE PROJECT SHOULD NOT BE CERTIFIED ON CONTAMINATED GROUND

The Committee cannot recommend certification, not only because of issues that this Intervenor raised about "Water Use", but because the proposed site is contaminated.

Finally this RPMPD at least recognizes, albeit in a footnote.[12] The Energy Commission should not certify this Power Project for exactly the reasons contained in Footnote 29. This environmental contamination of the project site is not cleaned up. The CEC simply ignores this serious environmental issue, relegating it to a footnote. The committee should further consider the testimony of Mr. Andy Welch: [RT 2/18/2000]

> "We did not look to put wells on our site or on the area immediately around it, on the Airport site, because we were informed by the United States Air Force Base Conversion Agency that they had contamination on the perched aquifer and they would not permit anyone to drill through those, that perched aquifer, at the risk of spreading that contamination to the lower. So we never considered that -- well, after talking to them we never considered it as a possibility."

III. LAWS, ORDINANCES REGULATION AND STANDARDS [LORS]:

1. THE WILL SERVE LETTER: Intervenor, an experienced Real Estate developer has never heard of a concept that a "Will Serve Letter" will come after project approval. The notion is preposterous; not even a draft of what it will look like is before the CEC. In fact the condition that is supposed to protect the Public is buried in Condition Number Three, which states a "Will Serve Letter" will be provided prior to commercial operation. The question continues to beg itself, how do you start construction of a $350,000,000 Power Project when you do not have a "Reliable" source of water? This solution defies common sense.

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[12] Footnote 29 RPMPD
We note, however, that in its February 23, 2000 comments on the federal draft EIS, US EPA expressed concerns "…regarding consistency of the proposed project with ongoing remedial cleanup of contaminated groundwater at the former George AFB." (Comments, p. 2.) USEPA basically recommends that the Air Force examine any groundwater plume under the proposed site prior to plant design and construction, and that the federal agencies establish a firm schedule and funding commitment to achieve this task as part of the final EIS. (*Id*.)

2. MWA ACT and PHYSICAL SOLUTION: The Mojave Water Agency [MWA] argues before the California Supreme Court[13] that the ACT that empowers its Physical Solution, is "equitable" because all and that all parties will share in the cost of restoring the basins to balance. It is notable that the present RPMPD makes several references on the MWA Case, Intervenor is grateful - the committee took the time to include this information. However, the Committee limits its use of the record picking and choosing areas that are interesting for informational purposes. However, the RPMPD demonstrates why the Committee fails to understand why, the water plan for HDPP is inequitable to the "Producers" globally and the farmers specifically and fails to comply with the law that enacted the MWA, and the California State Constitution.

The RPMPD sets the stage stating even with the Physical Solution in place for more than five years, to restore and cure the overdraft, no water is being purchased from the MWA to effect the cure.[14] What the judgement was supposed to do was to provide an equitable means of purchasing imported water[15] and creating "Return Flows"[16] The purpose of the Physical solution was to cure the overdraft. The "Cure" is the importation of SWP water, spread in the basins,

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13 Pending Review In the California Supreme Court Docket No. S07172S CITY OF BARSTOW et al., Plaintiffs and Respondents, v. **MOJAVE WATER AGENCY** et al. Defendant, Cross-complainants and Respondents, JESS RANCH WATER COMPANY, Cross-defendant and Appellant. And MOJAVE WATER AGENCY et al., Cross-complainants and Respondents, v. MANUEL CARDOZO et al. Cross-defendant and Appellants. Court of Appeal Case Nos. 017881/ E018923/ E018023 and E018681 v. Superior Court No. 208568

14 MWA Brief to Supreme Court - If the situation had been allowed to go unchecked, the probable result would have been ground subsidence, decreased water quality, increased costs to pump from constantly increasing depths, destruction of the underground storage capacity, and, ultimately, complete exhaustion of the underground supply.

15 MWA Brief to Supreme Court - The trial court Judgment provides an equitable mechanism, a "Physical Solution," for allocating pumping rights and financing the purchase of imported water supplies essential to the ongoing enjoyment of all classifications of water rights in the Basin.

16 MWA Brief to Supreme Court Pg. 48 - . . . parties who import non-native supplemental water into a watershed and allow it to recharge a groundwater supply have a prior and paramount right against all other water right claimants to recapture and use the non-native water, including the "return flows" following initial use of the foreign water. (14 Ca.3d at 257-262.) **The Physical Solution provides for the importation and distribution of supplemental water in order to recharge the Mojave System. {emphasis added}**

where at an average of 50% consumptive use the "Return flows" can be used by the other parties to the judgement.[17]

Of course the heart of the MWA argument before the California Supreme Court is that the State Constitution under Article X Section 2, gives the courts both "power and duty" to create an equitable physical solution.

The overriding policy of the State of California is to maximize the beneficial uses of its scarce water resources. This policy is expressed in Article X, Section 2, of the California Constitution, which states in pertinent part:

> It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare....[18]

For some reason the CEC fails to understand or elects to ignore the Constitution as is plainly interpreted by the MWA. Before the California Supreme Court, MWA states the method of "Curing the overdraft" is with imported water and that "Return Flows" is critical to that cure. The premise in the RPMPD that the VVWD and HDPP can buy SWP Water and directly consume the water that is owned and paid for by all of the taxpayers of this community circumvents the judgment and is absurd. Unlike all of the other producers, the only cost the HDPP is going to pay is the actual "delivery" cost plus the MWA markup.

The evidence in this case is overwhelming [Ex. 174] based on the current entitlement there is not enough water to cure the overdraft in all basins. Ramp downs will continue, and at some point the fully interruptible entitlement that is allocated to this project will not be available for this project and the project will be forced to shut down or go to Dry Cooling. [Buell Ex. 146A]

The issues of Water in this State have never been so hotly contested. As the MWA argues before the California Supreme Court that the ". . . Constitutional provision has been interpreted

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[17] MWA Brief to Supreme Court Pg. 48 - "At its heart, it allows each party to pump as much water as needed. Above a **certain level, each** party is required to pay a Replacement Water Assessment. This money is used to **acquire imported water which precludes continuing overdrafting"**

to mean that: **"Public interest requires that there be the greatest number of beneficial users which the supply can yield"**, it should be clear that in this critical and severely overdrafted water basin the 100% consumptive use of the life blood of this community, a property right of each of its citizens, not one cent of which has ever been paid for by the predecessors in interest of the HDPP, can be unfairly allocated or used in this manner.

Intervenor re-emphasizes to the Energy Commission that the State Department of Water Resources in a companion case, for the City of Victorville to purchase up to 1,500 acre-feet of treated effluent for use at George has indefinitely put their hearings on hold until the Supreme Court Rules as to the serious nature of the overdraft and the outcome on parties property rights.[19]

It is not unreasonable that the CEC also put certification on hold until the Water Issues are resolved by the pending action of the California Supreme Court.

IV. RELIABILITY - HDPP IS A PROJECT OF "TAKE YOUR CHANCES"

One of the most compelling issues is the subject of "RELIABILITY" of this project. The record is replete that Dry Cooling is the environmentally superior alternative. The Energy Commission is reluctant to mandate Dry Cooling because in the deregulated environment the "risk" is being assumed by the "applicant".

Perhaps the Commission should consider the issue of Reliability as shown in Sutter: Commission Final Decision Page 265

B. POWERPLANT RELIABILITY

> Applicable law does not establish specific criteria for power plant reliability or procedures for ensuring reliable operation. Nevertheless, the Commission is required to make findings as to the manner in which the project is to be designed, sited and operated to ensure safe and reliable operation. (20 Cal. Code of Regs., § 1752(c).)
>
> Applicant's submittal in this area consists primarily of its discussion of reliability contained in the Application for Certification. (Ex. 4, sec. 2.4, pp. 2-32 through 2-38.)

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18 MWA Brief to Supreme Court Pg. 48 -

19 Exhibit "A" Ledford Opposition to Applicant Request to Reopen the Record, Dated January 31, 2000

That section discusses project reliability in **terms of the expected plant availability, equipment redundancy, fuel availability, water availability, and project quality control measures.** . . The Applicant's projected equivalent availability factor for the SPP is estimated to be approximately 92 to 98 percent. (Ex. 4, p. 2-33.)

FINDINGS AND CONCLUSION

Based on the weight of the evidence of record, the Commission finds:

1. While exceedingly hot weather may effect the operation of the air cooled condenser at the power plant, equipment redundancy, as well as the quality of component design, construction, and installation at the plant will adequately ensure that the project maintains normal levels of reliability.

2. SPP is predicted to have an equivalent availability factor of 92 to 98 percent.

C. POWER PLANT EFFICIENCY

Commission Final Decision Page 269
Sutter Power Project

CEQA requires that environmental impacts be considered in power plant siting to identify the significant effects of a project on the environment, identify alternatives to the project, and indicate how those significant effects can feasibly be mitigated or avoided (Pub. Resources Code, § 21002.1.) CEQA Guidelines state that a "**...project will normally have a significant effect on the environment if it will...(n) [e]ncourage activities which result in the use of large amounts of fuel, water, or energy; (o) [u]se fuel, water, or energy in a wasteful manner...**" **(Cal. Code of Regs., tit. 14, CEQA Guidelines, Appendix G.)** CEQA continues, "'Feasible' means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social,
and technological factors" (Pub. Resources Code, § 21061.1.)

Testimony of record also compared the efficiency of the originally proposed wet cooling towers versus the required dry cooling in the form of an air cooled condenser. The wet cooling system described in the Application for Certification (Ex. 4, p. 2-18) would have yielded the highest efficiency, while use of the air

cooled condenser will reduce plant efficiency by approximately 1.5 percent during most of the year. When temperatures are at or above 100 degrees Fahrenheit the efficiency of the dry cooling technology is expected to be 5 percent less than that of wet cooling. Applicant confirmed this reduction in efficiency. (11/10/98 RT 35.) **Staff viewed this efficiency loss as a minor reduction which is reasonable in light of the accompanying:**

reduction in environmental impacts as a result of switching to dry cooling. These reduced impacts occur in the areas of water supply, waste disposal, and visual resources.

Commission Final Decision Page 270
Sutter Power Project

FINDINGS AND CONCLUSION

Based upon the evidence of record, we find as follows:

3. Applicant's change from a wet cooling tower design to an air cooled condenser is likely to reduce plant efficiency from approximately 54 percent to approximately 52.5 percent for most of the year. Efficiency on very hot days may drop as low as 49 percent.

4. The change to the use of an air cooled condenser rather than wet-cooling towers results

in significantly reduced environmental impacts when compared to the original proposal.

We therefore conclude that even though the project may experience efficiency reductions of up to five percent due to the use of dry cooling for the SPP, the project design represents a fuel-efficient power plant configuration based on its intended use and presents no significant adverse impacts upon energy resources.

In fact the "risk" of the High Desert Power project is born by the end users. Energy consumers and the Public must rely on the Energy Commission making decisions that provide "reliable" energy. The use of 'water' for 100% consumptive use for evaporative cooling as Mr.

Buell testified "has a high probability of the plant failing in the future" [Exhibit 146]. While he goes on to testify that the plant conditions could then be modified and Dry Cooling retrofitted, how long would that take? It cannot have been made more clear for the record than when Hearing Officer Valkosky, asked the Acting Manager of the MWA, if it was a matter of **"take your chances".**

> HEARING OFFICER VALKOSKY: "Okay, so again, just to relate it to this particular project, the City of Victorville, on behalf of the applicant, will be coming back every year, and **it's pretty much take your chances** depending on the availability of water?"
>
> Acting MWA Manager Mr. Cauoette: "That's correct"[20]

The logical conclusion is the use of Water for cooling at this site will not give the Energy Commission a reliable plant for its full-expected life, its just a matter of **"take your chances".**

V. DRY COOLING IS THE ENVIRONMENTALLY PREFERRED METHOD

Intervenor takes the position that Dry Cooling as the evidence showed is the environmentally preferred method of providing cooling for the HDPP as well as all future Power projects in the State of California. Preserving our valuable water resources for the use and reuse to its highest and best and most beneficial uses.

Intervenor argues that the commission is compelled to condition this project to use Dry Cooling as a matter of Law. The Commissioners are the conscious of the Public at large in this great State, and whether they may think that is it OK to allow a market driven economy to take the risk[21] of whether or not Wet Cooling will work or not, is not the issue of Law.

Section 21080.5. Certified Regulatory Programs.

The rules and regulations adopted by the administering agency for the regulatory program is mandated to do all the following:

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[20] Hearing Transcript October 7th 1999, page 336 lines 8 - 14

[21] Applicant has chosen to design the project with wet cooling towers, in other words to use water for cooling when it is available. This decision is apparently founded upon an economic evaluation *(9116199* RT 113) and, in the current competitive and deregulated electricity market, the committee believes "it is not ours to second guess".

Require that an activity **will not be approved or adopted as proposed** if there are **feasible alternatives** or feasible mitigation measures available which would **substantially lessen any significant adverse effect, which the activity may** have on the environment. And;

21002. Approval of Project: The Legislature finds and declares that it is the policy of the state that public agencies **should not approve projects** as proposed if there are **feasible alternatives or feasible mitigation measures**[22] available which would substantially lessen the significant environmental effects of such projects. Intervenor argues that CEC staff has consistently selected Dry Cooling as the preferable alternative:, citing the following that he believes indicates that Dry Cooling is the Environmentally superior alternative:

A. Power Plant Efficiency - Steve Baker: "While utilization of dry cooling would yield a small drop in efficiency, the benefits of dry cooling in terms of water supply outweigh any such disadvantage."[23] Question: "Do you believe that Dry Cooling is a viable alternative?", Answer: "From an engineering Standpoint, Yes it is".[24] ". . there is only about a 2% overall annual drop in efficiency. I deemed that to be an insignificant drop in efficiency. [25]

Zoran Rausavljevich [For Applicant]: Question: ". . .if there was not a reliable source of water the project itself would not be reliable" Answer "That is a good statement."[26]

B. Waste Management - Ellen Townsend-Smith testifies: "The State Water Resources Control Board Resolution 75-58 discourages the use of fresh inland water for power plant cooling and encourages. . Or other non-potable water sources. The policy also requires the evaluation of dry cooling and wet/dry cooling as a means of water conservation. No new conditions of certification will be proposed by staff for waste management to mitigate the effects of either dry of wet/dry cooling alternatives." Further Mr. Tooker, for CEC Testifies for Staff, when asked by Hearing Officer Valkoski if "Waste Generation would be more or less with dry cooling, his answer was - "Less".[27]

C. Power Plant Reliability - Steve Baker: As a part of staff's analysis of soils and Water Resources, **staff identified that the project as proposed could potentially result in significant impacts on water resources.** In addition, State

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22 Intervenor argues the evidence of record does persuasively establish the use of dry or hybrid cooling is not economically prohibitive since the applicant did not present any evidence to the contrary. Intervenor takes note, that dry cooling will be employed on the recently certified Sutter Power Project (Docket No. 97-AFC-2) and is proposed for use on the pending Otay Mesa project (Docket No. 99-AFC-5). *(9116199* RT 97: ~10; 10/8/99 RT 160-61.) These facts suggest that the use of dry or hybrid cooling is economically acceptable, at least for certain Projects at certain sites.

23 Hearing Transcript September 16, 1999. Page 168-169 & 176-177

24 Hearing Transcript September 16, 1999. Page 171

25 Hearing Transcript September 16, 1999. Page 174

26 Hearing Transcript September 16, 1999. Page 166

27 Hearing Transcript September 16, 1999. Page 195

Water Resources Control Board Resolution 75-58 discourages the use of fresh inland water for power plant cooling and encourages the use of wastewater or other alternative non-potable water sources. Based on these findings, staff has identified that dry cooling or wet/dry cooling may be feasible alternatives to the use of fresh inland water waters for HDPP cooling. **Any reliability impacts on the electric system due to reduced availability on hot days should be insignificant.**[28]

D. **Public Health - Obed Odomelam:** Mr. Obomelam's testimony before the commission was reconfirmed before the commission. "It will be appropriate, I believe that"[29] While non-biased professionals, may not necessarily make recommendations, his testimony was that Dry Cooling Was Appropriate. "The fresh water conserving policies of the State Water Resources Control Board points to Dry Cooling as an appropriate Alternative to wet cooling in power plants. **The Commission staff has noted this fact in identifying dry cooling as appropriate for the proposed project."**

E. **Noise - Steve Baker:** As a part of staff's analysis of soils and Water Resources, staff identified that the project as proposed could potentially result in significant impacts on water resources. In addition, State Water Resources Control Board Resolution 75-58 discourages the use of fresh inland water for power plant cooling and encourages the use of wastewater or other alternative non-potable water sources. Based on these findings, staff has identified that dry cooling or wet/dry cooling may be feasible alternatives to the use of fresh inland water waters for HDPP cooling. The potential for increased cooling tower noise emissions, however is inconsequential for the HDPP.[30]

F. **Visual Resources - Gary D. Walker:** The use of wet/dry cooling would reduce but not eliminate the potential for cooling tower plumes . . . Overall the difference in visual impact compared to the proposed project would be negligible. ". . .as I said in my Errata, overall, the use of dry cooling would reduce the visual impacts." He concluded it would be the best of the **two alternatives**.[31]

G. **Water and Soil - Joe O'Hagen:** When questioned by Hearing Officer Valkosky as whether the use of Dry Cooling would cause any significant effects on Water. Mr. O'Hagen replied, "NO".[32] and: ". . just from the basis of water conservation . . dry cooling is a great idea."[33]

VI. CONCLUSION

28 Exhibit 85
29 Hearing Transcript September 16, 1999. Page 159
30 Exhibit 85
31 Hearing Transcript September 16, 1999. Page 282
32 Hearing Transcript October 8th, 1999. Page 142

Intervenor requests the High Desert Power Project not be certified at this time and any all consideration for certification should be put on indefinite hold until the California Supreme Court has ruled on the Adjudication of the Water Resources of the High Desert and because:

1. There is a serious contaminated soil and water plume under the site, the result of fuel storage tank leakage on or near the site. No clean-up plan has been implemented by the United States Air Force and the construction of this Plant on this site will inhibit or prevent the clean up of this serious environmental damage.
2. As Clearly demonstrated in the findings of the Air Cooled Sutter Project demonstrated: "**The change to the use of an air cooled condenser rather than wet-cooling towers results in significantly reduced environmental impacts.**"
3. The project cannot be certified at this time if the applicant continues to propose Wet Cooling because:
    a. There is no **"Will Serve Letter"** to contractually provide for a continuous and uninterrupted flow of water to the plant during its operational lifetime. Without such a commitment the plant will be **unreliable** during its lifetime.
    b. There is no CEQA analysis of the Cumulative and or Growth Inducing Impacts associated with the over sizing of the pipelines and the water treatment facilities which will be used for "other", purposes than the HDPP's use for cooling. CEQA mandates this analysis; the CEC is not allowed to study their proposed power projects in a vacuum.
    c. Applicant cannot be afforded a contractual right outside the operation of the "Adjudication" wherein all local water producers are mandated to "cure" the critical and severe overdraft in the basin by purchasing replacement water two-acre feet of water for each acre-foot consumed. This project attempts to circumvent the mandate of the Physical solution.
    d. The evidence in the case demonstrates that MWA does not have enough water to cure the overdraft with its current entitlements. Thus even with a contract to provide water for project wet cooling, the contract water cannot be supplied if no SWP Water is available.

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[33] Hearing Transcript October 8th, 1999. Page 143 lines 13 - 15

e. The ability of HDPP to use SWP water for 100% consumptive use is contrary to the Physical Solution If allowed, 100% consumptive use gives HDPP an unfair advantage over all other water producers in the High Desert. The RPMPD favors the applicant at a cost to local citizens, taxpayers and water producers, and;

f. The use of State Project Water is a Property right of the citizens who paid for it.

g. The 100% consumptive use in a critical and severely overdrafted water basin is contrary to Article X Section 2 of the California Constitution.

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STATE OF CALIFORNIA

Energy Resources Conservation
And Development Commission

In the Matter of:	)	Docket No. 97-AFC-1
	)	
	)	
The Application for Certification	)	PROOF OF SERVICE
For the High Desert Power Project [HDPP]	)	
	)	

I Kathie Mergal declare that on _____, I deposited copies of the attached **Request to make Oral Argument on the Revised Presiding Members Proposed Decision**, in the United States mail in Apple Valley California with first class postage thereon fully prepaid and addressed to the following:

Signed original document plus 11 copies to the following address:

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Docket Unit
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Sacramento, CA 95814

In addition to the documents sent to the Commission Docket Unit, individual copies of all documents were sent to:

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I declare under penalty of perjury that the foregoing is a true and correct.

_____
Kathie Mergal